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UNITED STATES DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Docket No. 99-5880 - 5

Hours of Service of Drivers; Exemption Application From Hulcher Services, Inc.

COMMENTS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

On July 30, 1999, the Federal Highway Administration (FHWA) published a notice of application for exemption and intent to deny exemption (the "Notice") relating to an application of Hulcher Services, Inc. ("Hulcher") for exemption from the maximum driving time limitations of the Department's hours of service regulations. The Notice seeks public comment on the application and the FHWA's proposed denial. The International Brotherhood of Teamsters ("IBT"), by its undersigned counsel, files these comments in response to the Notice.

The IBT is a labor organization whose members include hundreds of thousands of persons, mostly drivers, employed by motor carriers. Because the risks to the travelling public and commercial drivers associated with fatigued drivers are both serious and well-documented, the IBT has a strong interest in ensuring strict compliance with the hours of service regulations.

The IBT supports the FHWA's intent to deny the exemption application filed by Hulcher. The IBT also supports the Notice's affirmation that, as a general matter, applicants for exemptions from safety-related regulations carry a heavy burden of

showing that the exemption is both necessary and consistent with the maintenance or enhancement of safety.

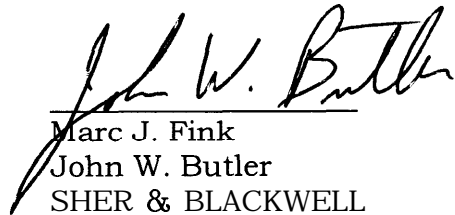
Although it supports the result proposed by the Notice, the IBT is considerably troubled by the fact that the FHWA has entertained the application at all. In FHWA Docket No. 98-4145, the IBT filed comments (February 8, 1999, copy attached) that demonstrated that the FHWA does not have the statutory authority to grant waivers of or exemptions from its hours of service regulations. Without restating those earlier comments in full, the IBT's fundamental point in that proceeding is that there is simply nothing in either section 3 13 15 or 3 1136 of title 49 of the U.S. Code that authorizes the FHWA to grant waivers of or exemptions from the hours of service regulations. Sections 3 13 15 and 3 1136 provide waiver and exemption authority for regulations promulgated under authority of chapter 3 13 and section 3 1136. The hours of service regulations, however, are promulgated under authority of 49 U.S.C. § 3 1502, which is not covered by the waiver and exemption authority. Accordingly, no waivers or exemptions may be issued for the hours of service regulations.

In order to provide certainty to the regulated community and to obviate the need to process applications that cannot legally be granted under any circumstances, the IBT respectfully requests that the FHWA, either in this proceeding or in Docket No. 98-4145, clearly acknowledge that it is not authorized to grant waivers of or exemptions from the hours of service regulations.

Respectfully submitted,

THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

By:



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August 30, 1999

Before the

STAMP & RETURN

UNITED STATES DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Docket No. FHWA--98--4145

Regulations; Waivers, Exemptions, and Pilot Programs; Rules and Procedures

DEPARTMENT OF TRANSPORTATION
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DOCKET SECTION

COMMENTS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

On December 8, 1998, the Federal Highway Administration (FHWA) published an interim final rule and request for comments in the above referenced docket concerning waivers and exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs), 63 *Fed. Reg.* 67600 (1998) (the "Notice"). The interim rules and proposed **final** rules are designed to implement sections 3 13 15 and 3 1136(e) of U.S. Code **Title** 49, as amended by Section 4007 of the Transportation Equity Act for the 2 **1st** Century ("TEA-2 1"). The International Brotherhood of Teamsters ("**IBT**"), by its undersigned counsel, files these comments in response to the Notice.

The IBT is a labor organization whose members include hundreds of thousands of workers employed by motor carriers. Because motor carrier safety standards directly affect the lives of these members, the IBT has a strong interest in ensuring that motor carrier operations meet objective and clearly defined safety standards, and that these standards are administered in a uniform fashion.

The IBT believes that the interim rules generally reflect the intent of revised sections 3 13 15 and 3 1136(e). In two regards however, the IBT disagrees with the

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Notice approach. First, the Notice states that the hours of service regulations are subject to the Secretary's exemption and waiver authority. As discussed in detail below, there is no statutory authority for applying the waiver and exemption provisions to hours of service, and the Secretary should remove the hours of service regulations from the list of rules from which waivers and exemptions may be sought. Second, while the IBT agrees that it is administratively unworkable to require notice and an opportunity to comment before the FHWA rules on waiver applications, the public should be informed of the agency's disposition of such applications promptly after a decision is made.

I. Revised Section 31315 of the Transportation Equity Act Does Not Authorize the Secretary to Issue Waivers and Exemptions from Hours of Service Regulations.

Section 4007 of the Transportation Equity Act of 1998 amended sections 31315 and 31136(e) by modifying the standard for granting waivers and exemptions from certain FHWA regulations. The FHWA, without explanation, concludes in the Notice that "the list of regulations for which a waiver or exemption could be granted includes . . . (8) Part 395--Hours of Service of Drivers." 63 Fed. Reg. **67600, 67605**. However, the plain meaning of amended sections 31315 and 31136(e), and a careful reading of related sections of the Act, demonstrate that hours of service regulations are not subject to the new waiver and exemption provisions.

Section 31315(a) states in relevant part that:

"The Secretary may grant a waiver that relieves a person from compliance in whole or in part with a regulation issued under this chapter or section 31136 if the Secretary determines that it is in the public interest to grant the waiver and that the waiver is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver." (emphasis added)

As the quoted language indicates, the grant of waiver and exemption authority applies only to regulations issued under Chapter 3 13 (Commercial Motor Vehicle Operators) or section 3 1136. Hours of service regulations, however, are promulgated under authority of section 3 1502. On its face therefore, section 3 13 **15(a)**¹ does not authorize waivers and exemptions from hours of service regulations.

Chapter 3 13 includes several sections dealing with licensing, training, and safety requirements. However, nowhere in Chapter 3 13 are hours of service addressed, and it is clear that no hours of service waiver **or** exemption power could derive from the section 3 13 15(a) reference to that chapter. The only other basis for the Secretary's assertion of waiver and exemption authority for hours of service regulations is the reference to section 3 1136. Presumably, the FHWA would argue (although it has not done so) that the section 3 1136 authority is **sufficiently** broad to authorize adoption of hours of service regulations, and therefore, that the 3 13 15 reference to 3 1136 is broad enough to convey waiver authority over hours of service. Whatever the scope of 3 1136, it contains no reference to hours of service. Thus, for the reasons discussed in more detail below, the section 3 13 15 reference to 3 1136 cannot provide a basis for extending waiver and exemption authority to the hours of service regulations.

Most telling, when Congress has previously granted the Secretary waiver or exemption authority over hours of service regulations, it has expressly

¹ Section 3 1136(e), as amended, simply authorizes the Secretary to grant waivers and exemptions "in accordance with section 31315. . ."

referenced section 31502 in the relevant statutory language. Section 345 of the Highway System Designation Act, addressing the Secretary's power to grant exemptions from requirements relating to commercial motor vehicles and their operators, states in relevant part that "regulations prescribed by the Secretary under sections 31136 and 31502.. . shall not apply to drivers transporting agricultural commodities." National Highway System Designation Act of 1995, Pub. L. No. **104-59**, § 345, 109 Stat. 613 (1995) (emphasis added). Equally significant, the previous section 31136(e), enacted in 1996, explicitly authorized the Secretary to grant and monitor exemptions from the provisions of "this section and sections 504 and 3 1502," as well as to insure that safety management controls were consistent with the regulations prescribed "under this section and sections 504 and 31502." 49 U.S.C.S. **§31136(e)(2)(A)**, (B) (prior to 1998 amendment) (emphasis added). In contrast, neither the amended version of section 3 1136(e) nor section 3 13 15 contains a reference to section 31502. In light of the fact that Congress demonstrated in both 1995 and 1996 that, when it intended to grant waiver and exemption authority over the hours of service rules, it did so by expressly referring to section 3 1502, Congress' failure to refer to section 3 1502 in amended section 3 13 15 must be read as excluding the hours of service regulations from the new waiver and exemption authority. See *Muscogee (Creek) Nation v. Hodel*, 851 F. 2d 1439, 1444 (D.C. Cir. 1988) ("Where the words of a later statute differ from those of a previous one on the same or related subject, the Congress must have intended them to have a different meaning."); see also *Lackey v. Johnson*, 116 F. 3d 149, 152 (**5th** Cir. 1997) (citing *Brewster v. Gage*, 280 U.S. 327, 337 (1930)).

Second, it is a cardinal principle of statutory interpretation that statutes are to be interpreted in a manner that does not render superfluous another portion of the same law, or in a way which would render another inoperative or superfluous, void or insignificant. *Kawaauhau v. Geiger*, 523 U.S. 57 (1998); *Asiana Airlines v. F.A.A.*, 134 F. 3d 393 (D.C. Cir. 1998). Furthermore, when a statute admits of a reasonable construction which can give effect to all of its provisions, a court should decline to adopt a strained reading which would render one part a mere redundancy. *Beef Nebraska, Inc. v. United States*, 807 F. 2d 712 (8th Cir. 1986).

Applying this principle, it cannot be found that 3 1136 extends to, and authorizes waivers and exemptions from, hours of service regulations. Section 3 1136 grants the commissioner authority to prescribe regulations on commercial motor vehicle safety. As previously indicated, section 3 1502 contains its own grant of authority for hours of service. If waiver and exemption authority is extended to apply to hours of service on the theory that section 3 1136 provides full authority to issue hours of service rules, then section 31502 would become superfluous, because its authority would be subsumed under the general authority of section 31136.

Based on the foregoing, the IBT submits that waivers extending to hours of service regulations exceed the bounds of the statute, and would therefore be void. *Bowen v. Georgetown*, 488 U.S. 204, 208 (1988); *Davis County Solid Waste Management v. U.S. E.P.A.*, 101 F. 3d 1395, 1410 (D.C. Cir. 1996) (“[i]t is axiomatic that an administrative agency’s power to promulgate legislative regulations is limited to the authority delegated by Congress.”).

II. The FHWA Should Provide Post-Decision Public Notice of All Agency Action on Waivers.

Since section 31315 limits the duration of a waiver to three months, **pre-**issuance public notice may be an inefficient use of government resources. However, there is no similar justification for not providing post-decision public notice with regard to action on waivers. In contrast to pre-decision notice, **post-**decision notice would not delay processing or implementation of a waiver. Moreover, post-decision notice would provide essential safety information to the motor carrier industry and the public. Especially since there will be no public notice prior to agency action on a waiver application, it is imperative that the agency disclose its decisions after they are made in order that the regulated community and the travelling public are aware of the standards under which certain motor carriers are operating. Accordingly, the IBT proposes that all waiver decisions be published *in the Federal Register* immediately after issuance.

Conclusion

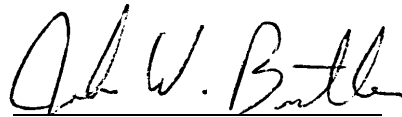
Revised section 31315 of the Transportation Equity Act does not authorize the Secretary to issue waivers and exemptions from hours of service regulations. Accordingly, the Secretary should clarify that waivers and exemptions are not available from the hours of service regulations. The Secretary should also reconsider its position on post-decision public notice on all agency action on waivers. Adopting public notice procedures is clearly in the

public interest, as such procedures would promote safety while imposing a *de minimis* administrative burden upon the FHWA.

Respectfully submitted,

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